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OLL 83-2849
1 December 1983

MEMORANDUM FOR: Deputy Director, Office of Legislative Liaison
FROM: [REDACTED] Legislation Division, OLL
SUBJECT: Legislation Restricting Polygraphs in the
Business Sector

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1. Representative Stewart McKinney has introduced legislation (H.R. 2403) which would prohibit any person engaged in private business from permitting, requiring, or requesting any employee to take a polygraph test (Tab A). Representative McKinney had introduced identical legislation in the 97th Congress (H.R. 6034).

2. It is the opinion of the Office of General Counsel (OGC) and the undersigned that McKinney's bill could adversely affect the Industrial Polygraph Program. Pursuant to that program, the Agency polygraphs certain employees of Agency contractors who have Sensitive Compartmented Information (SCI) access. The polygraph is confined to counterintelligence issues. Because the McKinney bill would impose criminal penalties on any private business entity that permits or requires its employees to be polygraphed, it was felt that the McKinney bill could either result in Agency contractors discontinuing the polygraph program or being held legally liable for permitting the polygraph program to continue.

3. In order to insure that the McKinney bill would not affect the Industrial Polygraph Program, OGC recommended in 1980 that the bill be amended so as to exclude polygraph tests administered by any organization within the Intelligence Community to contractors or employees of contractors who are selected to perform intelligence, counterintelligence, or national security functions, or support of security duties related to such functions (See Tab B for actual amendatory language). [REDACTED] informs me that he and [REDACTED] visited Mr. McKinney's staff assistant in 1980 to discuss with him our concerns. In the course of the meeting, it became clear that McKinney did not intend for his bill to affect the Industrial Polygraph Program, and the staff assistant agreed to insert the amendatory language. No further action occurred on the bill in the 97th Congress. When the bill was reintroduced in the 98th Congress, it did not include the amendatory language. [REDACTED] believes that this could have been an oversight.

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4. Since OGC has already discussed this matter with an individual on McKinney's staff,^{1/} I would recommend that we revisit Mr. McKinney or his staff assistant to see if they would still be willing to amend their bill to take care of our concerns. It would be much easier to have the bill amended by the original sponsor rather than other Congressmen who have signed the "Dear Colleague" letter.



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Attachment

^{1/} Unfortunately does not remember the name of the staff assistant he spoke with, nor was a Memorandum For The Record written concerning the meeting.

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98TH CONGRESS
1ST SESSION

H. R. 2403

To protect the rights of individuals guaranteed by the Constitution of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of polygraph equipment for certain purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1983

Mr. MCKINNEY introduced the following bill; which was referred jointly to the Committees on the Judiciary and Education and Labor

A BILL

To protect the rights of individuals guaranteed by the Constitution of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of polygraph equipment for certain purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Polygraph Control and
4 Privacy Protection Act of 1983".

5 SEC. 2. It shall be unlawful for any person engaged in
6 any private business or other private activity in or affecting
7 interstate commerce, or any individual acting under the au-
8 thority of such person—

1 (1) to permit, require, or request any officer or
2 employee employed by such person or any individual
3 seeking employment in connection with such business
4 or activity to take any polygraph test in connection
5 with such officer's, employee's, or individual's services
6 or duties or in connection with such officer's, employ-
7 ee's, or individual's application or consideration for
8 employment;

9 (2) to deny employment to any individual, or to
10 discharge, discipline, or deny promotion to any officer
11 or employee employed in connection with such business
12 or activity, or to threaten any such denial, discharge,
13 or discipline by reason of such officer's, employee's, or
14 individual's refusal or failure to submit to such require-
15 ment or request; or

16 (3) to accept or use the results of any polygraph
17 test in connection with the services or duties of any of-
18 ficer or employee employed in connection with such
19 business or activity, or in connection with any individ-
20 ual's application or consideration for employment in
21 connection with such business or activity.

22 SEC. 3. (a) Whoever willfully violates or willfully at-
23 tempts to violate this Act shall be fined not more than
24 \$1,000, or imprisoned not more than one year, or both.

1 (b) Whoever violates this Act shall be subject to a civil
2 penalty, payable to the United States, of not more than
3 \$10,000.

4 SEC. 4. (a) Any individual who is or would be aggrieved
5 by a violation or threatened violation of this Act may bring a
6 civil action on such individual's own behalf, or on behalf of
7 such individual and others similarly situated, against the of-
8 fending person in the appropriate United States district court
9 and recover appropriate relief.

10 (b) With the written consent of any individual who is or
11 would be aggrieved by a violation or threatened violation of
12 this Act, any appropriate employee organization may bring
13 such a civil action on behalf of such individual, or may inter-
14 vene in any such civil action.

15 SEC. 5. As used in this Act the term—

16 (1) "polygraph test" means any examination ad-
17 ministered to an individual by mechanical, electrical, or
18 chemical means to measure or otherwise examine the
19 veracity or truthfulness of such individual; and

20 (2) "appropriate employee organization" means
21 any organization (including any brotherhood, council,
22 federation, union, or professional organization) made up
23 in whole or in part of employees and which has as a
24 purpose dealing with an employer concerning the con-
25 ditions and terms of employment of an individual

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1 against whom there is a violation or a threatened vio-
2 lation of this Act.

3 SEC. 6. This Act shall take effect thirty days after the
4 date of the enactment of this Act.

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